

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection) MM Docket No. 92-260
and Competition Act of 1992:)
)
Cable Home Wiring)

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF INDEPENDENT CABLE &
TELECOMMUNICATIONS ASSOCIATION

INDEPENDENT CABLE & TELECOMMUNICATIONS
ASSOCIATION

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Dated: March 18, 1996

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INTRODUCTION

The Independent Cable & Telecommunications Association ("ICTA") submits these comments in response to the Further Notice of Proposed Rulemaking (the "Notice") in the above-referenced proceeding.^{1/}

ICTA represents a cross-section of companies on the cutting-edge of the telecommunications revolution leading the U.S. into the twenty-first century. Its members include private cable operators (referred to also as satellite master antenna television), shared tenant services providers, equipment manufacturers, program distributors, and property management and development companies. While ICTA operator members originally concentrated their competitive entry efforts within the video services marketplace, the last five years in particular have marked a tremendous expansion into the provision

^{1/} ICTA is the successor organization to the National Private Cable Association.

of voice and data communications services to consumers throughout the country. ICTA operator members employ a variety of telecommunications technologies, both wired and wireless, to serve primarily the residential multiple dwelling unit ("MDU") market. Thus, ICTA members primarily compete with both franchised cable operators, the dominant player in the local multichannel video programming distribution market, and incumbent local exchange carriers ("LECs"), the dominant player in the local telephone market. Without the competition fostered by ICTA members, and other emerging technology companies, MDU owners and managers, as well as tenants, would have little choice among cable and telecommunications providers.

DISCUSSION

I. CABLE DEMARCATION POINT ^{2/}

A. **ICTA Believes That If The Commission's Cable Home Wiring Rules Give the Tenant Rather Than The Property Owner The Right to Purchase The Cable Home Run Wiring After Service Termination, The Tenant Should Have That Right Where The Property Owner Terminates The Service Instead Of The Tenant**

For the reasons discussed in ICTA's comments to the Notice of Proposed Rulemaking in Telecommunications Services Inside Wiring: Customer Premises Equipment, CS Docket No. 95-184 (rel. Jan. 26, 1996) (the "Proposed Rulemaking 95-184"), which comments are incorporated herein by reference, ICTA believes that the Commission should move the cable demarcation point for MDUs to the point where the wire is dedicated to an individual unit, and upon termination of the service the property owner (instead of the tenant) should have the option to purchase the dedicated wire. Therefore, ICTA believes that this issue will become moot. If, however, the Commission allows the tenant rather

^{2/} ICTA's comments with regard to the cable demarcation point issues relate to non-loop systems. ICTA will not be filing initial comments with regard to the issues raised relating to loop systems.

than the property owner to purchase that wire, the tenant should have that right regardless of whether it is the tenant or property owner that terminates the service.^{3/} As the legislative history to 47 U.S.C. §544(i) ("Section 16(d)") establishes, Congress enacted that provision so that property owners could i) avoid incurring damage to their property by the cable operator's removal of the inside wiring after termination, and ii) avoid the cost and inconvenience of having new wiring installed when a different provider is chosen. Senate Comm. On Commerce, Science and Transp., Cable Television Cons. Prot. And Comp. Act of 1992, 102d Cong., 2d Sess. 23 (1992), reprinted in 1992 U.S.C.C.A.N. 1133, 1156. Unless the Commission prescribes rules to ensure that the necessary wiring can be purchased, that damage, cost and inconvenience will occur regardless of whether the tenant or the property owner terminates the cable service, and therefore it would be inconsistent with congressional intent to permit the purchase of the wiring only where the tenant terminates the service.

The Commission's regulation providing that the cable operator must sell the cable home wiring where there is a "voluntary termination by the subscriber," 47 C.F.R. §76.802, does not change this analysis. That Regulation refers to the fact that the tenant's termination must not be the result of any breach of its obligations to the cable operator, such as a failure to pay its bill or theft of cable service. In the Matter of Implementation of the Cable Television Cons. Prot. And Comp. Act of 1992; Cable Home Wiring, 8 FCC Rcd. 1435, 1436 (1993). However, if that regulation can be or is construed differently to prevent the sale of the wiring where the property owner terminates the service, that regulation should be changed to effectuate the purposes behind Section 16(d).

^{3/} As explained in ICTA's comments to Proposed Rulemaking 95-184, if the tenant continues to have the right to purchase the wiring, the demarcation point cannot be extended because the Commission lacks the statutory authority to do so and such an extension would result in an unconstitutional taking of the property owner's property.

B. ICTA Believes That If The Commission Permits The Tenant To Purchase The Cable Home Wiring Rather Than The Property Owner, The Commission Should Permit The Property Owner To Purchase The Wiring If The Tenant Does Not

For the same reasons as described in the preceding section, ICTA believes that this issue will become moot. If it does not, however, and if the Commission allows the tenant to purchase the wiring, it should provide the property owner the right to purchase the wiring if the tenant refuses. As ICTA's comments with respect to Proposed Rulemaking 95-184, which are incorporated herein by reference, establish, competition is promoted if the property owner is permitted to purchase the cable home wiring after termination of the cable service and competition is impeded by allowing the cable operator to own that wiring after termination. Moreover, as shown above, Section 16(d) was enacted so that property owners could avoid the damage, cost and inconvenience to their property associated with the removal of the old inside wiring and the installation of the new inside wiring. If the cable operator continues to own the inside wiring that damage, cost and inconvenience will surely occur. Thus, the Commission clearly has the statutory authority to permit the property owner to purchase the wiring even if the Commission disagrees with ICTA's conclusion in its comments to Proposed Rulemaking 95-184 that the property owner is the subscriber under Section 16(d).

Moreover, it has been ICTA's experience that tenants often terminate service at the point of their departure from the building. At that time, tenants have no incentive to purchase wiring which they will undoubtedly not remove for future re-use elsewhere. Only the property owner has that incentive in order to avoid damages to the unit from a removal. Logic, therefore, dictates that the Commission should permit acquisition of the wire by the property owner in the absence of tenant purchase.

C. ICTA Believes That Where The Tenant Vacates Its Rental Unit Prior To Seven Business Days After Termination Of Service, The Cable Operator Should Still Be Required To Remove The Wiring Before The End Of Seven Business Days To Retain Ownership Of The Wiring

If the Commission adopts ICTA's recommendation or alternative recommendation in Proposed Rulemaking 95-184, this issue is moot. ICTA believes that if the Commission does not adopt either of those recommendations, it should require the cable operator to remove the wiring before the end of seven business days regardless of whether the tenant vacates the apartment before the end of that period. The fortuitousness of when the tenant vacates the rental unit should not affect the cable operator's obligation to remove the wiring promptly if it wishes to retain ownership. There is nothing in the statute or regulations that would alleviate the cable operator's obligation to remove or abandon the wiring if the tenant vacates the rental unit.

CONCLUSION

ICTA believes that the Commission should adopt rules and regulations consistent with ICTA's comments to Proposed Rulemaking 95-184 and the comments herein.

Respectfully submitted,

INDEPENDENT CABLE & TELECOMMUNICATIONS
ASSOCIATION

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